

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

May 5, 2003

RESPONSIBLE STAFF:

Tony Tomasello, Assistant City Manager

Greg Ossont, Neighborhood Services Director

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	04-22-03
Advertised	04-23-03
Hearing Date	5-5-03
Record Held Open	
Policy Discussion	

TITLE: Public Hearing

An Ordinance to Repeal and Reenact With Amendments to Chapter 6 of the City Code Entitled "Community Antenna Television Systems," so as to Retitle the Chapter as "Cable Services," and to Generally Modernize the Ordinance

SUPPORTING BACKGROUND:

The proposed amendments to Chapter 6 will update the language and technical definitions. The current codes regulating cable television systems in the City were adopted in 1986 and have not been amended since. The current Code is antiquated and does not reflect the substantial changes that have taken place within the industry in the interim.

In addition, the proposed renewal of the franchise agreement between the City and Comcast Communications cannot be executed until the proposed amendments are adopted.

Significant changes include:

- Changing the name of the chapter from "Community Antenna Television Systems, "to "Cable Services."
- Adopting language to more accurately reflect the technological and operational improvements of modern cable systems.
- Clarify and expand the City's role in cable construction and inspections within the City limits

The proposed amendments were advertised on April 23, 2003 and staff has received no formal feedback.

DESIRED OUTCOME:

Staff recommends the record be held open for 10 days, with final action anticipated on May 19, 2003.

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS TO
CHAPTER 6 OF THE CITY CODE ENTITLED "COMMUNITY ANTENNA
TELEVISION SYSTEMS," SO AS TO RETITLE THE CHAPTER AS
"CABLE SERVICES," AND TO GENERALLY MODERNIZE THE ORDINANCE

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg in public meeting assembled that Chapter 6 of the City Code, Article I is hereby amended and is adopted to read as follows:

Chapter 6

COMMUNITY ANTENNA TELEVISION SYSTEMS CABLE SERVICES

Article I. City Franchise

- § 6-1. Intent and purposes.
- § 6-2. Definitions.
- § 6-3. Franchise required.
- § 6-4. Award of franchise.
- § 6-5. Compliance with other regulations and ordinances.
- § 6-6. Indemnification.
- § 6-7. Conditions of street occupancy and system construction.
- § 6-8. Approval of construction by city; inspection; correction of defects in system; breach or default by franchisee.
- § 6-9. Required standards of service.
- § 6-10. Length of franchise; transfer of franchise.
- § 6-11. ~~Additional grounds for default or breach by franchisee; additional rights and~~
and remedies by city
- § 6-12. Lack of enforcement not waiver.
- § 6-13. Use of poles and conduits by others.
- § 6-14. Service to city and other agencies.
- § 6-15. Resolution of complaints and disputes.
- § 6-16. Franchise fees, reports and records.
- § 6-17. Emergency declaration.

Article II. Reserved

ARTICLES I. CITY FRANCHISE

Sec. 6-1. Intent and purposes.

It is the intent of the city to promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cablecommunication system; to promote the widespread availability of cable service to city residents wherever economically feasible, including, but not limited to, those who reside in multifamily buildings; and to provide regulation of the cablecommunications system by the city, throughout the term of the franchise.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

CATV system. ~~The lines, cables, fixtures, equipment, attachments, towers, satellites, converters, and all appurtenances thereto used in the construction, operation and maintenance of a system for the interception, sale and distribution of television and radio signals.~~ Cable service. (1) The one-way transmission to subscribers of video programming or other programming services; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system. A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the city, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of federal law, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers; (4) an open video system; or (5) any facilities of any electric utility used solely for operating its electric utility system.

City. The City of Gaithersburg in its present incorporated form and areas which may hereafter become annexed to the city.

Council. The city council for the City of Gaithersburg, Maryland.

Financial performance instrument. Cash, irrevocable letter of credit, certificate of deposit or bond issued by a ~~surety, surety~~ or a bank qualified to do business in Maryland.

Franchise. The contract by which the rights are granted to construct, maintain and operate a cablecommunications system over, on or under streets, roads and all other public ways, easements and rights-of-way within all, or specified, areas in the city, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the city as may be required by other ordinances and regulations of the city.

Franchisee. The natural person(s), partnerships(s), domestic and foreign corporation(s), association(s), limited liabilities company(ies), joint venture(s) or organization(s) of any kind granted a franchise by or under this chapter and its lawful successor, transferee or assignee.

Gross revenues. All revenues derived from the operation of the cable communications system, ~~which operation shall be interpreted to include all services and auxiliary equipment provided by the franchisee or by any other person in which the franchisee has a financial or proprietary interest.~~ system in the provision of cable services.

Material breach. The failure to adhere to, comply with or perform any material obligation or duty imposed by law or franchise agreement ~~which would render implementation or performance of the franchise by franchisee different in substance from what is required by law or contracted for under the franchise agreement.~~ agreement. provisions.

Person(s). Any individual, corporation, partnership, association, limited liability company, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

Subscriber. Any person who legally receives any one of the cable services provided by the cablecommunications system.

Transfer. The disposal by the franchisee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of five (5) percent or more of the ownership or controlling interest in the system to a person or a group of persons acting in concert, none of whom already owns twenty-five (25) percent or more of such ownership or controlling interest. (Ord. No. O-10-86, 10-27-86)

Sec. 6-3. Franchise required.

No person shall construct or operate in, over, upon, across, or under the public streets, alleys, and ways of the city any part of a CATVcable system without first obtaining a franchise therefor from the council. The rights and obligations of a cable-television franchisee shall be governed by ~~this~~ the franchise, any related franchise agreement, as well as applicable federal, state, and local law or regulation. No franchise may be transferred without the approval of the council by resolution duly enacted and no franchise agreement may be modified or amended except as authorized by council resolution. (Ord. No. O-10-86, 10-27-86)

Sec. 6-4. Award of franchise.

(a) The council may, by ordinance, award a franchise on a nonexclusive basis to applicants who demonstrate legal, character, financial, technical and other pertinent qualifications to erect and operate a CATV~~cable~~ system. Any transfer of a franchise shall be governed by section 6-3 of this chapter.

(b) Any applicant proposed to be granted a franchise shall accept such proposed franchise and enter into a franchise agreement with the city, including furnishing the required ~~surety~~ or financial performance instrument and insurance acceptable to the city within sixty (60) days from the date of the award. If any proposed franchisee fails to do so, the franchise award shall be null and void. At all times during the term of any franchise, the franchisee shall keep in force the financial performance instrument, conditioned upon the faithful performance and discharge of obligations imposed by law and the franchise. The financial performance instrument may be used by the city for liquidated damages caused by, or resulting from, the violation of this chapter, applicable federal or state law or the franchise agreement.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-5. Compliance with other regulations and ordinances.

The franchisee shall, at all times during the life of its franchise, be subject to all lawful exercise of police power by the city and such reasonable regulations as the city shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the cable system by the franchisee shall be in full compliance at all times with the National Electrical Code, city building code and other city ordinances and regulations, as they may from time to time be amended and revised, and in full compliance with all other applicable statutes, rules and regulations now in effect or hereinafter adopted of any governmental agency. All required permits must be obtained by franchisee from appropriate governmental agencies.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-6. Indemnification.

The franchisee agrees, by acceptance of its franchise, to save the city harmless from any loss sustained by the city on account of any suit, judgment, execution, claim or demand whatsoever arising out of the construction, operation or maintenance of the cable system by the franchisee, including copyright or trademark infringement, and the franchisee agrees to keep in force and effect at all times during the term of this franchise liability and property damage insurance protecting the city against such suits, judgments, executions, claims or demands relating to personal liability and property damage in a sum satisfactory to the city. Such insurance shall be written by a company or companies authorized and qualified to do business in the state. Certificates of all required coverage shall promptly be filed by the franchisee with the city, and annually thereafter during the term of any franchise.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-7. Conditions of street occupancy and system construction.

(a) All CATV cable system facilities erected by the franchisee within the city shall be so located as to cause minimum interference in the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners, upon whose land such facilities are located, or who adjoin any of such streets, alleys or other public ways and places, containing system facilities.

(b) No poles shall be erected within the city by the franchisee for the purpose of installing its transmission lines. ~~Where existing utility poles erected by other franchised public utilities are not available to the franchisee for this purpose, the franchisee's lines shall be installed below the surface of the ground.~~ lines except as authorized by the franchise agreement.

(c) If the franchisee, in the exercise of its franchise, shall disturb any lawn or landscaped area, pavement, sidewalk, driveway or other surfacing, it shall, at its own expense and in a manner approved by the city, replace and restore such areas so disturbed in as good condition as before such work was commenced.

(d) If during the period of its franchise, the city or any other governmental agency or public utility shall desire to repair or relocate any of its utilities, which shall require the removal and relocation of the facilities of the franchisee, the franchisee shall promptly remove or relocate its facilities upon request of the city or such other governmental agency or public utility, at franchisee's expense.

(e) Subject to the provisions of the Cable Communications Policy Act of 1984, as amended, a franchisee must obtain permission for use of private property and no such permission or consent shall contain a waiver of rights by any owner of such private property.

(f) Where the moving of a structure or building owned by any other person shall necessitate the temporary relocation of any wire or equipment installed or used by the franchisee as part of its CATV cable system, upon request of such person, the franchisee shall promptly move such wire or equipment at the expense of the person making the request.

(g) The franchisee shall not place any of its wires, structures or equipment where the same will interfere with any gas, electric, telephone, sewer or water line, fixture or equipment.

(h) Nothing in this chapter shall grant to the franchisee any right of property in city-owned property, nor shall the city be compelled to maintain any of its property any longer than, or in any fashion other than, in the city's judgment, its own business or needs may require.

(i) ~~The~~ Absent the city's gross negligence or intentional misconduct, the city shall not be liable for any damage occurring to the property of the franchisee caused by employees of the city in the performance of their duties, nor shall the city be held liable for the interruption of service by actions of city employees in the performance of their duties, nor shall the city be held liable for the failure of the franchisee to be able to perform normal service due to acts of God.

(j) The city shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the city be responsible for the securing of any permits or agreements with other persons or utilities.
(Ord. No. O-10-86, 10-27-86)

Sec. 6-8. Approval of construction by city; inspection; correction of defects in system; breach or default by franchisee.

(a) ~~Except for individual service drops, as permitted by the terms of the franchise agreement,~~ the franchisee shall not, within the city, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the city manager or his designee. Such approval shall not be unreasonably withheld and action shall be taken on any request for approval within three (3) business days of receipt of the request, or it shall be deemed granted. Franchisee shall be able to make emergency repairs as needed. The city shall have and maintain the right to inspect the construction, operation and maintenance of the cable system by the franchisee to ensure the proper performance of the terms of this chapter.

(b) In the event the franchisee should violate any of the terms of this chapter or any federal, state or local law or regulation, or any of the rules and regulations as may hereafter be from time to time lawfully adopted, or any provision of the franchise agreement, the city shall promptly give the franchisee ~~fifteen (15) days~~ written notice of the violation, breach, default or noncompliance. The franchisee shall ~~within fifteen (15) days of receipt of written notice from the city~~ substantially undertake and promptly correct such default, breach, violation or noncompliance and certify the same to the city. In the event that the franchisee fails to substantially undertake such corrective action ~~within fifteen (15) days of receipt of such written notice and promptly complete the corrective action,~~ the city may: in the manner set forth in the franchise

(1) ~~Make such correction itself and charge the cost of the same to the franchisee; and/or~~

(2) ~~Secure the proceeds from any financial performance instrument posted by the franchisee or impose the sum of fifty dollars (\$50.00) per day for each day of breach or violation following the cure date that franchisee fails to meet an agreed upon limit for such activity or its contractual or legal obligations; and/or~~

(3) ~~In agreement,~~ the city may take appropriate remedial action as set forth in the franchise agreement, which may include in the case of a material breach of this chapter or the franchise agreement, declaring the franchisee in default and terminate ~~terminating~~ the franchise agreement and rights granted under the franchise.

~~Upon any termination of the franchise by the city or the city's refusal to renew the same pursuant to applicable federal law, the franchisee shall within thirty (30) days of receipt of notice of termination or refusal to renew the franchise, remove its facilities and equipment and~~

~~in the event that the franchisee does not remove its facilities and equipment within the time provided in this section, the city may do so, the removal cost to be borne in any event by the franchisee. Any enforcement action or remedy provided by this section or this chapter of the Code or by the franchise agreement shall not be deemed exclusive but shall be alternative or cumulative in nature. Notwithstanding anything to the contrary in this chapter, except in the events described in section 6-11(a) of this chapter, the city shall not impose any penalty upon the franchisee where either the violation or failure to cure the same result from force majeure, labor dispute, declaration of war or other hostilities, act of God, or any other reason beyond the control of the franchisee.~~

(Ord. No. O-10-86, 10-27-86)

Sec. 6-9. Required standards of service.

(a) During the term of a franchise, the franchisee shall promptly offer to all persons within the city desiring the service offered, and paying for the same, a cablecommunication service, in full accordance with this chapter and the franchise, ~~capable of producing as good a quality television picture or reception as may be practical and shall make all reasonable and practical betterments to said service as improvements in the science of the carrying of television signals warrant, as well as in the elimination of objectionable radio interference. The franchisee shall, at a minimum, offer service in all areas presently within the city limits.~~ franchise agreement. Should the city annex additional territory in the future, that annexed area shall be provided with cabletelevision service in accordance with the Gaithersburg cable television franchise, except in those particular areas where cable plant exists as of the date of annexation pursuant to the terms of the Montgomery County cable television franchise. If cable plant exists pursuant to the Montgomery County cable television franchise at the effective date of this franchise or of annexation, the city may request interconnection of such cable plant with the Gaithersburg cable system. If franchisee is required to either reconfigure or construct distribution plant in excess of one-quarter (1/4) mile from interconnect points in order to interconnect the city cable plant with the annexed cable plant, the city shall reimburse the franchisee for the cost of such interconnection. franchise agreement. As soon as practicable, the city shall provide the franchisee with the dates for areas scheduled for annexation.

(b) The franchisee shall provide residential channel capacity and technical performance equal to that provided in other areas of Montgomery County, Maryland. This requirement pertains only to residential channel capacity and technical performance. In all other respects, the express terms of this chapter and the franchise agreement shall govern franchise requirements.

(c) The franchisee shall carry on its CATV cable system, without deprivation of programs, announcements and advertisements in their entirety from all television broadcast stations carried in full compliance with Federal Communications Commission rules and regulations.

(d) The franchisee shall not use the cable system to interfere or conflict with services offered by state or local public utilities, nor cause interference to existing broadcast stations or interference with television reception of nonsubscribers.

(e) The franchise will operate its franchise in full compliance with all federal law regarding the transmission of obscene cable services by the franchisee on channels subject to its editorial control is prohibited. Contemporary community standards within the city shall govern enforcement of this provision materials.
(Ord. No. O-10-86, 10-27-86)

Sec. 6-10. Length of franchise; transfer of franchise.

A franchise granted for a CATVcable system shall be for a term of up to fifteen (15) years, beginning on the day of granting of the franchise, unless it is earlier surrendered or terminated pursuant to this chapter. A franchise granted for a CATVcable system within the city shall not be transferred without prior approval of the council.
(Ord. No. O-10-86, 10-27-86)

Sec. 6-11. Additional grounds for default or breach by franchisee; additional rights and remedies by city.

~~(a) A franchisee may also be declared in material default of this chapter and its franchise agreement and be subject to the termination of its franchise, should any of the following events occur:~~

- ~~(1) Insolvency including the appointment of a receiver or trustee whether in receivership, reorganization or bankruptcy.~~
- ~~(2) Foreclosure or other judicial sale of the plant, property and equipment of the franchisee.~~
- ~~(3) Abandonment for a continuous thirty-day period (irrespective of intent to do so), termination or failure to operate or maintain service to subscribers without prior council approval.~~

~~(b)(a)~~ In the event the franchisee should violate any of the terms of this section or other provisions of this chapter, chapter or the franchise agreement, the city may avail itself of all other rights and remedies provided for elsewhere in this chapter or the franchise agreement.

~~(e)(b)~~ The city shall additionally have the right to enforce its actions with respect to franchisee's breach of this chapter or franchise agreement pursuant to a material breach or termination or revocation of franchise by appropriate administrative and/or judicial action. The city may institute injunctive or other appropriate proceedings to enforce the provisions of this chapter or the franchise agreement; and any court of competent jurisdiction shall have the right

to issue restraining orders, injunctions, set damages or other appropriate forms of remedy or relief.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-12. Lack of enforcement not waiver.

Failure to enforce or insist upon compliance with any of the terms or conditions of this chapter or the franchise agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-13. Use of poles or conduits by others.

Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by the city, by act or otherwise, to others not parties to any such franchise, to use any poles or conduits covered by this chapter, and the city shall have the right to continue and extend such rights and privileges. The attachment privileges herein granted shall at all times be subject to such existing contracts and arrangements.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-14. Service to city and other agencies.

(a) The franchisee shall designate, set aside and reserve one "access" channel on the cabletelevision system for the exclusive use of city officials and city residents. Additional "access" channels may be provided on the cable television system ~~at the franchisee's sole discretion.~~ system as set forth in the franchise agreement. Nothing in this chapter shall be construed to prevent city residents from using access channels provided by the Montgomery County cable television franchisee for use by county residents, if the Montgomery County franchise would otherwise permit such use.

(b) ~~The franchisee shall maintain a local origination point within the city to allow access to the cable television system. It shall be the city's responsibility to construct and operate any origination studio at that point. It shall be the franchisee's responsibility to provide training in the operation of equipment and facilities.~~

(c) ~~The franchisee shall provide free installation and service except pay TV service to all municipal and public school buildings as set forth in the franchise agreement.~~

(d) ~~The City of Gaithersburg and local businesses shall have the right to interconnect with the Montgomery County Cable Television I Net should any such I Net ultimately pass through the city.~~

(Ord. No. O-10-86, 10-27-86)

Sec. 6-15. Resolution of complaints and disputes.

~~The council may provide as part of~~Subscriber complaints and disputes shall be resolved by processes and procedures set forth in the franchise agreement a process and procedures to resolve subscriber complaints and disputes. Such process and procedures may include provisions for the implementation of administrative or other remedies. Any violation of the process and procedures established or refusal by the franchisee and applicable law. to abide by the same shall be conclusively presumed to be a violation of this chapter and the franchise agreement. The complaint or dispute process shall not be exclusive, but may be in addition to any other right or remedy to the city provided by this chapter, or other law, or the franchise agreement.

(Ord. No. O-10-86, 10-27-86)

Sec. 6-16. Franchise fees, reports and records.

(a) Every franchisee shall pay a franchise fee equivalent to five (5) percent of gross revenues of the city franchised CATV system. The council may, by resolution, authorize the rebate or refund of all or any portion of the franchise fee to subscribers within the city. The council shall have the right annually to change the amount of the franchise fee provided it shall not exceed five (5) percent of gross revenues, or modify the amount of any rebate or refund to city subscribers. Any rebates to subscribers directed by the council shall be on a monthly basis and administered by the franchisee.

(b) A franchisee shall file with the council a certified financial statement in form acceptable to the city clearly showing the amount and sources of gross revenues received during the preceding quarter and the distribution of the franchise fee.

(c) The franchisee shall submit to the council an annual financial report not later than ninety (90) days following the end of its fiscal year. The annual financial reports shall reflect:

- (1) Balance sheet;
- (2) Income statement;
- (3) Cash flow statement;
- (4) Statement of sources and application of funds;
- (5) Statement of current and projected subscribers and penetration; and
- (6) Other financial information of a nonprivileged nature requested by the council.

(d) The city shall have the right to inspect the books and records of the franchisee during normal business hours, the right of audit and the recomputation of any amounts determined to be payable under this chapter; ~~provided, however, that such audit shall take place within twelve (12) months following the close of the franchisee's fiscal year chapter.~~ Any additional amount due the city as a result of the audit shall be paid within thirty (30) days following written notice to the franchisee by the city, which notice shall include a copy of the audit report. The cost of said audit shall be borne by the franchisee if it is properly determined that the annual payment for the preceding year is increased thereby by more than five (5) percent. ~~Upon written request of the franchisee and approval of the city council, selected information~~ Information of a proprietary nature submitted to the city pursuant to any awarded franchise shall not be made routinely available for public inspection.

(e) In the event any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such due date at the annual rate to be specified by the council.
(Ord. No. O-10-86, 10-27-86)

Sec. 6-17. Emergency declaration.

The council hereby declares that an emergency exists which requires that the public interest be protected by adoption of this chapter as emergency legislation pursuant to Section 11 of the City Charter.
(Ord. No. O-10-86, 10-27-86)

ARTICLE II. RESERVED

ADOPTED this _____ day of _____, 2003 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this _____ day of _____, 2003. APPROVED by the Mayor of the City of Gaithersburg, this _____ day of _____, 2003.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2003, and that the same was approved by the Mayor of the City of Gaithersburg on the _____ day of _____, 2003. This Ordinance will become effective on the _____ day of _____, 2003.

David B. Humpton, City Manager

Boldface

Underling

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by Amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.